

**REMARKS/ARGUMENTS**

Claims 1-6, 8-11, 15, 16, 18, 19, 21-52, 54-56, 58-71, 77-82, 84-86, 88-106, 108-115, 117 and 118 are pending in the application, with claims 1, 47, 77, and 98 being independent. The present Response does not add, cancel, or amend any claims. Thus, claims 1-6, 8-11, 15, 16, 18, 19 and 21 are under consideration, with claims 22-52, 54-56, 58-71, 77-82, 84-86, 88-106, 108-115, 117 and 118 being withdrawn further to the election requirement.

In the Office Action dated February 5, 2007, claims 1-6, 8-11, 15, 16, 18, 19 and 21 are rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1-3 of U.S. Patent No. 6,586,520 (hereinafter, "the '520 patent").

***Status of Withdrawn Claims***

Currently, claims in group I are under consideration, and non-elected claims in groups II-IV (corresponding to claims 22-52, 54-56, 58-71, 77-82, 84-86, 88-106, 108-115, 117 and 118) are withdrawn from consideration. The Examiner has indicated that the non-elected claims of groups II-IV would be rejoined when the claims in group I are in condition of allowance. Accordingly, rejoinder of the non-elected claims is requested upon allowance of the claims under consideration.

***Response to Obviousness-Type Double Patenting Rejection***

Claims 1-6, 8-11, 15, 16, 18, 19 and 21 are rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1-3 of the '520 patent.

The Office Action asserts that the present claims are not patentably distinct from the claims of the '520 patent. In particular, the Office Action asserts that the only difference between the claims is that the claims of the '520 patent do not disclose presently-recited component C. The Office Action alleges that it would have been obvious to add component C and its function in the claims of

the '520 patent since the addition of an element and gain of its function from a combination is obvious in the absence of a showing of unexpected results following from such addition.

As an initial matter, the Office Action has not even established a *prima facie* case of obviousness-type double patenting, because the Office Action provides no motivation to modify the '520 claims in the manner suggested by the Examiner, and cites no supporting documentary evidence. The Office Action does not provide any reason at all why one would have been motivated in the first place to add the ingredient, and provides no reason at all why one would want to gain its function. Instead, the Office Action merely makes the conclusory statement that it would have been obvious to add the element to gain its function. For at least these reasons, it is respectfully submitted that the Office Action does not establish a *prima facie* case of obviousness-type double patenting.

Moreover, the rejection itself only mentions claim 1, and does not make any showing that the rejection is applicable to any other pending claim.

In any event, the Office Action acknowledges that a showing of unexpected results would overcome this rejection. Accordingly, even had the Office Action established a *prima facie* case of obviousness (which Applicants maintain is not the case), the claimed compositions and methods of the present invention yield unexpected results sufficient to rebut a *prima facie* case of obviousness. In this regard, In re Soni, 34 USPQ2d 1684, 1687-1688 (Fed. Cir. 1995), held that a showing of substantially improved results for invention, and a statement that results were unexpected suffices to establish unexpected results absent evidence to the contrary. Id. at 1687-88.

In this case, the specification states that compositions and methods of the present invention have properties that are:

more favorable than that which would be expected to be supplied by each component, separately, particularly in view of the fact that the resultant composition exhibits positive aspects of each of the components, while certain negative aspects that would be expected by use of each component, separately, are not exhibited.

(Disclosure at page 35, lines 1-6). Therefore, since the specification discloses unexpected and improved results, this case involves patentable subject matter just as In re Soni involved a patentable invention. Accordingly, all pending claims should be found patentable over the claims of the '520 patent.

For all of the above reasons, Applicants respectfully request the Examiner to withdraw the rejection of record.

### CONCLUSION

For the reasons advanced above, Applicants respectfully submit that all pending claims patentably define Applicants' invention. Applicants request allowance of the elected claims, as well as rejoinder and allowance of the claims withdrawn from consideration. Allowance of the application with an early mailing date of the Notices of Allowance and Allowability is therefore respectfully requested.

Should there be any questions, the Examiner is invited to contact the undersigned at the below listed telephone number.

Respectfully submitted,  
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